

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 656
Case No. 89-15C
(PUD at 5333 Connecticut Avenue, N.W.)
March 12, 1990

Pursuant to notice, a public hearing of the District of Columbia Zoning Commission was held on November 16, 1989. At that hearing, the Zoning Commission considered an application from Calvin Cafritz for consolidated review and approval of a planned unit development (PUD), pursuant to title 11 DCMR, Zoning, Section 2400. The public hearing was conducted in accordance with the provisions of 11 DCMR, Section 3022, of the Zoning Regulations.

FINDINGS OF FACT

1. The application, which was filed on May 24, 1989, requested consolidated review and approval of a planned unit development for Lots 20-25, 35, 37, 44, 826, 827, 829 and that portion of a public alley to be closed pursuant to S.O. 85-243 revised in Square 1873 at 5333 Connecticut Avenue, N.W.
2. The applicant proposes to construct a multi-story apartment house containing approximately 204 apartments and not more than 9,500 square feet devoted to a combination of medical clinic space and commercial adjuncts for tenant use.
3. The PUD site is located at the southeast corner of Connecticut Avenue and Military Road, N.W. in the northern-most portion of Square 1873 and is bounded by Military Road to the north, Connecticut Avenue to the west, Kanawha Street to the south and Chevy Chase Parkway to the east. The site consists of 47,275 square feet of presently unimproved land. The single-family dwellings on Lots 38 and 828 located immediately to the east of the PUD site and owned by the applicant are not included in this PUD application, but will ensure a substantial buffer area between the project and the surrounding neighborhood.
4. As an integral element of this PUD application,

applicant has undertaken to substantially reconfigure the existing alley system in the northern-most portion of Square 1873. Pursuant to S.O. 85-243 revised the existing north-south paper alley with access to Kanawha Street will be closed and the applicant will establish a new and enlarged alley over his property as requested by the community. The construction and maintenance of the new alley for the benefit of the residents of Square 1873 and the District of Columbia will be undertaken at substantial expense by the applicant. At present, the applicant is completing the covenant processing required for the official closing of the existing Kanawha Street alley by the District of Columbia Surveyor.

5. The subject site is located within an R-5-C zone District. The applicant did not request a change of zoning.
6. The R-5-C District permits as a matter-of-right the construction of medium-high density development of general residential uses, including single-family dwellings, flats, apartment buildings, and uses accessory to the apartments, to a height of 90 feet, with a maximum floor area ratio (FAR) of 3.5 and a maximum lot occupancy of seventy-five percent.
7. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to impose development conditions, guidelines and standards which may exceed or be less than the matter-of-right standards identified above. In an R-5-C zone, the PUD development guidelines set forth in 11 DCMR Section 2403 provide for a maximum height of 90 feet and a FAR of 4.0.
8. Under 11 DCMR Section 2401.1, the minimum area requirement for a PUD in a R-5-C zone district is 15,000 square feet. The PUD site exceeds the minimum area requirement.
9. The zoning pattern in the area surrounding the PUD site is predominantly R-5-C, with medium-high density residential developments on the lots fronting on the east and west sides of Connecticut Avenue, N.W. and with lower density (R-1-A and R-1-B) neighborhoods of single-family homes on the streets crossing and extending further east and west of Connecticut Avenue, N.W., respectively.
10. The area immediately surrounding the PUD site is characteristic of the Connecticut Avenue corridor. The R-5-C Connecticut Avenue Corridor, along which the PUD site lies at its northern end, runs from Woodley Park

north to Chevy Chase Circle and is dominated by multi-family apartment, condominium and/or cooperative buildings with a comparable height and density to the proposed PUD development. On the west side of Connecticut Avenue, facing the PUD site are two 3 and 4-story townhouse complexes. Between Military Road and Legation Street, apartment buildings and condominiums of 5, 8, and 9 stories respectively, face Connecticut Avenue. Continuing north to Livingston Street, on the west side of Connecticut Avenue, are three-story apartment buildings. Between Livingston Street and Legation Street on the east side of Connecticut Avenue, are five apartment buildings ranging in size from 4-9 stories. In the middle of the block running between Legation Street and Military Road, is a large 11-story apartment building, the Kenmore. On the northeast corner of Military Road and Connecticut Avenue, across Military Road from the PUD site are several 3 to 4 story townhouses which face both Connecticut Avenue and Military Road. Immediately south of the PUD at the southeast corner of Connecticut and Kanawha Street is a 9 story apartment at approximately the same height as to the proposed project. Next door is another 6 story building at the northeast corner of Connecticut Avenue and Jocelyn Street, N.W.

11. The District of Columbia General Land Use Element of the Comprehensive Plan for the National Capital designates the Connecticut Avenue Corridor, including the PUD site, as appropriate for a "high density residential" development.
12. The applicant proposes to construct a multi-story, 204 unit apartment building on the site, including 204 resident and 30 visitor underground parking spaces (not more than 12 parking spaces will be located in vault space), a meeting room, fitness center, 9,500 square feet of medical clinic and commercial adjunct space, facilities for tenant storage and other amenities. The apartment building will have a gross floor area of 189,100 square feet, have a total FAR of 4.0 (excluding the loading bay, service bay and loading dock), rise to a maximum height of 90 feet and occupy approximately 43% of the total land area of the site.
13. The principal vehicular access to the PUD site will be from Military Road. The two-way circular driveway located on Military Road will provide two points of access to the parking and service facilities and will be screened from view from the street and by adjoining neighbors by creation of a landscaped berm along Military Road. The project will be set back from the Military Road building restriction line 20 feet to allow access to the underground parking facilities and

service areas without disruption in the flow of vehicular traffic on Military Road and to reduce shadows. A ceremonial entrance and lobby will be serviced by a circular driveway at Connecticut Avenue.

14. The applicant proposes to locate up to 9,500 square feet of medical clinic and commercial adjunct space on the lower level of the building as a use permitted by special exception in an R-5-C Zoning District. The applicant proposes further to limit the nature of the uses of the medical clinic to those that are compatible with the neighborhood and not likely to be high volume or high traffic generators.
15. The proposed apartment building has been designed in the shape of a T, with the top of the T running north-south on Connecticut Avenue, and the stem running east-west and parallel to Military Road and Kanawha Street. The bulk of the proposed building will be massed along Connecticut Avenue and the building will be stepped down or decreased in height at the eastern portion of the site which is adjacent to the existing single-family residential uses. The portion of the building facing Connecticut Avenue will be 11 stories, while that portion of the structure extending eastward will be stepped down to 6 stories. This configuration will minimize any impact on the surrounding residential uses by creating a smooth transition.
16. On Kanawha Street, the east-west portion of the building will be set back approximately 79 feet from the building restriction line. In the open space created by this set back, a garden, for the use of the building's tenants, will be located on the Kanawha Street side which will create a buffer for the adjoining residential uses. Next to the garden on the eastern boundary of the site, will be a non-diving pool with a retractable cover for enhanced safety and security during periods when the pool is not in operation. Access to the garden and pool will be through doors located off the lobby. The pool area will be surrounded by a solid fence and screened by evergreen trees. A wrought iron-type fence will surround the garden area and there will be no access to this area from Kanawha Street, except a gate for maintenance purposes that will be locked when not in use. The garden and pool areas will be appropriately lighted and monitored for security purposes and the pool will have a lifeguard on duty during its hours of operation. Lighting in the garden area will be directed inward to the site.
17. The PUD site, and especially the eastern boundary which

is immediately adjacent to the single-family dwellings on Lots 38 and 828, will be extensively landscaped. The applicant intends to preserve the healthy large trees that presently surround the site, as well as the Cypress and Spruce trees along the southwest corner. The existing sidewalks on Connecticut Avenue, Military Road, and Kanawha Street will be retained and kept open except for repair and reconstruction work.

18. The applicant contends that the PUD project is supportive of the housing goals of the District of Columbia Comprehensive Plan Act of 1984 which addresses the need to stimulate the production of new housing, particularly new rental apartment development. Local planning, embodied in the Draft Ward Three Plan adopted June 16, 1987, specifically encourages the production of more rental housing in Ward 3 as opposed to more condominium or cooperative development.
19. The applicant also contends that the PUD project will be consistent with the District of Columbia Comprehensive Plan Act of 1984 in promoting the achievement of city-wide goals, plans and programs in land use, urban design, economic development, housing, environmental protection, and transportation. The proposed PUD will allow the subject site to be developed rationally for rental housing with the preservation of a maximum of green space. The use, bulk and scope of the PUD project will be consistent with the neighboring uses and will not adversely impact existing single family residential development.
20. The applicant's traffic expert contends that the proposal will have minimal impact on the street system as a result of additional site-generated traffic and increased demand for on-street parking adjacent to the site. In particular, the traffic report submitted for the record indicated that this project will only result in a two (2) percent increase in vehicles traversing the intersection of Connecticut Avenue and Military Road. No decrease in the present levels of service will be produced by this project. Finally, the PUD's design which allows for the maneuvering of vehicles internally on the site without impeding the flow of street traffic and the enhanced levels of underground parking creates a traffic/parking condition that is superior to a matter-of-right development of the site.
21. The applicant requested certain flexibility in the final PUD design and plans as follows:
 - a. Reduce the number of dwelling units by up to 10% in order to respond to prevailing market conditions at the time of construction and

marketing of the project. Notwithstanding any reduction in the number of dwelling units, applicant will provide at least 204 residential and 30 visitor parking spaces, subject only to subsurface soil conditions;

- b. Adjust the size, location and design of interior components, including the medical clinic and commercial adjunct space, tenant storage facilities and the other common tenant amenities, provided that such relocations are in compliance with the standards set by the Zoning Commission. In no event will the total area devoted to medical clinic and commercial adjunct space exceed 9,500 square feet;
 - c. Provide a 50% compact car ratio for parking spaces in all parking areas in order to maximize the parking capacity of the PUD project;
 - d. Use a variety of masonry and other materials to achieve the architectural effect depicted on the architectural plans filed with the Zoning Commission; and
 - e. Adjust the design of the rooftop and penthouse structures of the building to allow for harmonious architectural embellishment of the new structure.
22. The applicant contends the following benefits otherwise not guaranteed through a matter-of-right development are created, including:
- a. Establishment of a thoughtfully designed apartment building with approximately 204 units, including a mix of one and two-bedroom units of varying sizes. The project will feature setbacks and massing carefully designed to minimize the impact on the neighborhood;
 - b. Develop a vacant site with much needed rental housing accommodations;
 - c. Create a new and enlarged alley over applicant's property which will serve the residents of Square 1873;
 - d. Maximize the amount of open space incorporated into the PUD site;
 - e. Provide underground parking facilities for residents and visitors, substantially in excess of required levels, that will minimize any additional demand for on-street parking in the surrounding

residential neighborhood. Unused tenant parking will be offered for rent to residents in the surrounding buildings and neighborhood;

- f. Provide medical clinic space for doctors and dentists conveniently located for use by area residents;
 - g. Provide commercial adjuncts that will supply everyday conveniences to the tenants;
 - h. Provide a transportation management plan, involving a coordinated strategy to minimize the traffic impact of the PUD project on the neighborhood streets and to encourage the use of mass transportation;
 - i. Provide access to the Project's community room to neighborhood groups; and
 - j. Provide economic benefits to the city and for the District residents through the following:
 - (i) Increased real estate tax revenues;
 - (ii) Increased income and other tax revenues from increased District of Columbia residency;
 - (iii) Commitment to jobs for minorities in the construction of the project through the Minority Business Opportunities Commission; and
 - (v) Creation of new service jobs at the completed building.
23. The District of Columbia Office of Planning ("OP"), by memorandum dated November 6, 1989 and by testimony presented at the public hearing, recommended approval of the PUD application.
24. OP endorsed the PUD proposal and stated that it "does not impair the intent, purpose and integrity of the Zoning Regulations and is not inconsistent with the Comprehensive Plan of the District of Columbia. Furthermore, this proposal is consistent with the overall intent and purpose of the PUD process. The City is supportive of this project's contribution in providing new housing opportunities and neighborhood-serving commercial uses. The Office of Planning believes that the proposed amenities that are an essential part of this PUD are commensurate with the zoning relief requested." The OP memorandum noted that while the introduction of this building into the neighborhood will require "some adaptation by nearby

- residents, the siting, massing and landscaping of the project appear to be handled quite skillfully. The resulting design solution will likely produce a building that is as good as or better than most of the apartment buildings along that section of Connecticut Avenue."
25. The District of Columbia Department of Public Works ("DPW"), by memorandum dated November 6, 1989 concluded that the additional traffic generated by the development will not create significant adverse impacts on the local street system. In addition, DPW indicated that it had no objection to the two-way circular driveway off Military Road, the level of underground parking to be provided and loading and service facilities. The existing water, sanitary sewer and storm water sewers were also determined to be of adequate capacity to serve the proposed PUD.
 26. The District of Columbia Fire Department ("DCFD"), by memorandum dated October 17, 1989 stated that the proposed apartment building "does not appear to create any major or undue hardships on the daily operations of the Fire Department." The Fire Department had no objection to the proposal provided the applicant comply with the fire protection and life safety provisions of the District of Columbia Codes (BOCA and amendments) as listed in D.C. Law 6-216.
 27. The Department of Finance and Revenue ("DCFR"), by memorandum dated October 25, 1989 stated that it had no objection to the PUD application.
 28. The Metropolitan Police Department ("MPD"), by memorandum dated October 24, 1989 stated that it was not opposed to the PUD application. The MPD suggested that the applicant consider a number of security measures that might be appropriate for the building. Applicant has designed the proposed building with state-of-the-art security features.
 29. The Office of Business and Economic Development (OBED), by memorandum dated October 26, 1989 stated that it had no objection to the proposed development and in fact favored the creation of additional housing and medical care facilities in the District.
 30. The Department of Recreation (DCRD), by memorandum dated November 1, 1989 complimented the applicant's inclusion of a nondiving swimming pool and fitness facilities as amenities in the proposed building. The Department also suggested that applicant integrate a small children's play area and passive seating area into the garden area. The applicant has included in

the design plans for the garden, passive seating located in the pergola.

31. As readily acknowledged by all the parties, the applicant and the community have worked together closely over the course of the last 4 1/2 years to create the development plan for this project. As a result of numerous formal and informal meetings between the applicant, Advisory Neighborhood Commission ("ANC") 3G, the Square 1873 Committee and individual neighborhood residents, a development plan evolved that is widely supported by the community. The Commission applauds the spirit of cooperation, communication and compromise demonstrated by the parties.
32. Advisory Neighborhood Commission 3G submitted a letter dated November 8, 1989 and presented testimony at the public hearing reporting the adoption of a resolution by the ANC stating its support for the PUD project subject to the following conditions:
 - a. Provide 214 resident and 34 visitor parking spaces.
 - b. If the proposed building eventually has less than 204 dwelling units, the parking provided shall remain constant at 214 resident and 34 visitor spaces.
 - c. Provide no more than 10,000 square feet of medical clinic and/or commercial adjunct space.
 - d. The main ingress/egress shall be off Military Road.
 - e. When the building is 75% occupied, the applicant will spend up to \$7,500 to retain a traffic consultant in cooperation and agreement with ANC 3G to identify, analyze and develop possible solutions for traffic problems created by the building.
 - f. Each apartment shall be provided a parking space in the lease or in a possible subsequent condominium fee simple title.
 - g. The rental lease or any subsequent condominium fee simple title shall provide that residents/owners will not be allowed to apply for District of Columbia residential parking permits.
 - h. Applicant shall allow neighborhood groups to use the community room, rent free, upon written request and subject to availability.

- i. The proposed building shall be stepped down in its east-west wing so that the eastern-most section of the building shall be not more than 6 (six) stories high for a distance of 41 feet, and that the middle section of this east-west wing shall be no more than nine (9) stories high for an east-west distance of 78 feet.
- j. The north side of the east-west wing shall be set back from the front of the single-family houses on Military Road by 144 feet (20 feet from the north side of the east-west wing to the north building restriction line, and an additional 45 feet from the south building restriction line to the south curb line of Military Road, and an additional 79 feet from the south curb line of Military Road to the north-front facing of the single-family homes north of Military Road).
- k. The south side of the east-west building wing shall be set back from the single-family homes on Kanawha Street by 150 feet (79 feet from the south side of the east-wing to the south building restriction line, an additional 25 feet from the south building restriction line to the south curb of Kanawha Street, and an additional 46 feet from the south curb of Kanawha Street to the south-front facing of the single-family homes north of Kanawha Street).
- l. The building shall not have balconies above the second floor on its north facing.
- m. The building shall have landscaping substantially in excess of landscaping normally required by a building as-of-right and exceeding the amount and quality thereof normally required for a matter of right apartment building.
- n. The landscaping shall include a berm at the project's ingress and egress point on Military Road to screen the view of neighborhood residents from this driveway.
- o. The applicant will work with a neighborhood committee composed of the ANC and neighbors during the site planning, design and construction of the proposed apartment building.
- p. The PUD order shall contain all promises by the applicant as well as provisions of the ANC motion.
- q. The PUD order shall contain a restriction that

keeps the single-family houses at 3710 Military Road and 3737 Kanawha Street, both of which are owned by Calvin Cafritz, as single-family zoned land in perpetuity.

At its regularly scheduled meeting on November 27, 1989, ANC 3G voted to reaffirm its position with respect to conditions (e), (f) and (g) as set forth above. Additionally, ANC 3G voted to reaffirm its earlier decision to take no position with respect to the inclusion of a non-diving swimming pool in the project.

33. At the public hearing, a representative of ANC 3G testified to several issues of particular concern to the community. In order to minimize the increased demand for on-street parking generated by the project, ANC 3G expressed its support for including a parking space in the lease for each apartment. The ANC also reiterated the importance of the berm as a means of screening the residents on the north side of Military Road from the new building and the traffic entering and exiting the project. Finally, ANC 3G renewed its request that the applicant and any subsequent owners restrict the use of 3710 Military Road and 3737 Kanawha Street to single-family residences. Each of these issues are specifically addressed by the conditions approved by the ANC and submitted in the record in this case.
34. The Square 1873 Committee, representing the residents of the neighborhood surrounding the PUD site and having been granted party status by the Commission, presented testimony in support of this application at the public hearing. Although the Square 1873 Committee and the applicant had entered into an agreement dated November 16, 1989 on numerous issues, various members of the Square 1873 Committee presented testimony on areas of particular concern that had not been resolved. In particular, the testimony presented requested that a parking space be included automatically in each lease, the pool be eliminated, 3710 Military Road and 3737 Kanawha Street be restricted to single-family residential uses by a covenant, applicant obtain a bond to insure against property damage from construction activities, and clarification of the medical clinic and commercial adjunct uses to be permitted.
35. The applicant and the Square 1873 Committee, subsequent to the hearing, have reached a "full and final agreement" with respect to all issues of concern to the community. This agreement was submitted for the record on November 30, 1989 and supersedes and replaces any prior written submissions and agreements by the Square 1873 Committee. The agreement specifically establishes

conditions for approval of this PUD application with respect to the following issues: parking, swimming pool, alley, set backs, roof step down, balconies, vehicle entrances, landscaping, garden and building perimeter lighting, 3710 Military Road and 3737 Kanawha Street residences, commercial uses, community room, construction, use of 3710 Military Road during construction, and project monitoring committee. The Commission finds that the conditions contained in the November 30, 1989 agreement between the applicant and the Square 1873 Committee have been made a part of the Commission's Order.

36. Mr. Jeffrey Norman, the former ANC 3G Commissioner for the single member district in which the PUD site is located and an active participant in 4 1/2 years of negotiations between the applicant and the community, testified in support of the project. Mr. Norman noted that as a result of numerous meetings with the community, the applicant had made "numerous improvements to the plan in order to meet the legitimate concerns of the community".
37. Several residents on the north side of Military Road testified as persons in opposition based on their belief that the impact of the project would fall more heavily on Military Road than on Kanawha Street. In particular, the Military Road residents expressed concern over the proximity and height of the building, the berm, parking and traffic.
38. The owner of 3702 Military Road, Mr. David J. Bardin, testified neither in support nor opposition to the project, but as to his concern that the new alley in Square 1873 remain operational at all times and that the applicant assume responsibility for maintenance. The Commission notes that the applicant has agreed to maintain the new alley in a covenant required in the ally closing proceeding. Additionally, under the agreement with the Square 1873 Committee, the applicant has promised to maintain access for city services or provide alternative arrangements should it be necessary to interrupt normal use of the alley for more than 7 days during construction.
39. The applicant has entered into Minority Business Opportunity Commission and First Source Employment agreements with the District of Columbia. Copies of these agreements were submitted for the record.
40. The applicant has executed a covenant, as requested by ANC 3G and the Square 1873 Committee, which restricts the use of 3710 Military Road and 3737 Kanawha Street to single-family residential uses for the life of the

PUD. A copy of this covenant was entered into the record.

41. The Zoning Commission concurs with the position of the applicant, OP, DPW, DCFR, MPD, OBED. DCRec, and ANC-3G, and believes that the PUD proposal is an appropriate development for the site.
42. The Zoning Commission finds that the applicant was responsive to the concerns raised by the ANC and the Square 1873 Committee regarding parking, the swimming pool, the alley, the building setbacks, balconies, landscaping, commercial uses, construction the community room, and 3710 Military Road and 3737 Kanawha Street residences.
43. As to the concerns of the persons in opposition, the Commission is mindful of the parking and traffic issues and believes that the 234 parking spaces and conditions of the lease regarding parking has addressed the concern.
44. The Commission finds that the applicant has met the intent and purpose of the Zoning Regulations, and further finds that the proposal is suitable for the site, and that the design, height, density, and scale are compatible with the subject area.
45. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC"), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated March 6, 1990, indicated that the applicant would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to provision of additional rental housing on the subject site, the preservation of a maximum green space and the protection of the neighborhood.
2. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned residential development which will offer an attractive architectural design with more efficient and economical

land utilization than otherwise achievable under matter-of-right development.

3. The development of this PUD project is compatible with the city-wide land use, economic development, housing, environmental protection, urban, design, and transportation goals, plans and programs.
4. Approval of this PUD application is not inconsistent with the Comprehensive Plan of the National Capital and with the purposes of the Zoning Act.
5. The proposed PUD application can be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
6. The Commission has accorded the Advisory Neighborhood Commission 3-G "the great weight" to which it is entitled.
7. The approval of this PUD application will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
8. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the District of Columbia Zoning Commission hereby orders approval of this application for consolidated review of a planned unit development for Lots 20-25, 35, 37, 44, 826, 827, 829 and that portion of a public alley to be closed pursuant to S.O. 85-243 in Square 1873 located at 5333 Connecticut Avenue, N.W. The approval of this PUD application is subject to the following guidelines, conditions and standards:

1. The Planned Unit Development (PUD) shall be developed in accordance with the architectural plans prepared by Smith, Blackburn and Stouffer, marked as Exhibit No. 24 of the record, as modified by the guidelines, conditions and standards of the Order. For the purpose of this order, the term "lessee" shall apply to any lessee, tenant, or resident of an apartment unit.
2. The project shall be developed as a multi-story apartment house with certain non-residential uses which are allowed as a special exception in an R-5-C zone District, including a medical clinic and commercial adjunct space.

3. The project shall have 184-204 on-site residential units.
4. The floor area ratio (FAR) of the project shall not exceed 4.0 (excluding the loading bay, service bay and loading dock).
5. The height of the new building shall not exceed 90 feet, excluding architectural embellishments and any penthouse.
6. The lot occupancy shall not exceed forty-three percent (43%).
7. If subsurface soil conditions do not permit three levels of underground parking, then the Applicant shall file a letter with the Zoning Commission for approval to construct the maximum amount of underground parking reasonably feasible under the existing subsurface soil conditions.
8. The final design of the underground parking levels shall include a minimum of 5 handicapped parking spaces as shown on the plans marked as Exhibit No. 24 of the record.
9. The applicant may adjust the ratio of standard and compact automobile parking spaces provided for in subsection 2115.2 of the DCMR Title 11, so that a maximum of forty percent (40%) of the parking spaces provided for the PUD project may be designated for compact automobiles.
10. Landscaping and lighting shall be provided and maintained as indicated in the Landscape and Grading Plan (Drawing No. L1) submitted as Exhibit No. 29.
11. The applicant is granted the following flexibility in the final detailing of the building with respect to the following matters:
 - a. Varying the size, location and number of apartment units in the new building by not more than 10%, provided that the number of apartment units shall not be less than 184 or greater than 204;
 - b. Varying the size, location, configuration and design of interior components, including the medical clinic and commercial adjunct space, tenant storage facilities and the common tenant amenities, provided that such relocations are in compliance with the standards set by the Zoning Commission. In no event

will the total area devoted to medical clinic and commercial adjunct space exceed 9,500 square feet;

- c. Varying the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at time of construction, provided the applicant shall submit its final selection of the exterior materials to the Zoning Commission for final approval, which the Commission may determine to grant without having a further public hearing.
- 12. The Zoning Commission reserves the discretion to determine the proceedings by which it will consider any matter submitted to it, pursuant to Paragraphs b and c of Condition No. 11 of its Order.
 - 13. Antennas shall be permitted on the PUD site, subject to the Zoning Regulations adopted by the Zoning Commission in Case No. 84-10.
 - 14. The following terms and conditions set forth in the November 30, 1989 Agreement between the Applicant and the Square 1873 Committee shall apply:
 - a. Parking.
 - i. The proposed building shall provide at least 234 interior parking spaces (at least 204 spaces reserved for residents and 30 spaces for visitors). The developer agrees to use his best efforts to increase the total number of parking spaces to 248.
 - ii. The total top level of parking (an amount not less than 30 parking spaces) inside the building shall be dedicated to visitor/non-resident parking on a 24-hour basis.
 - iii. Each rental lease (or subsequent condominium title) shall clearly state that all residents of 5333 Connecticut Avenue shall be ineligible for the life of their lease (or title) to obtain District of Columbia Department of Public Works residential street parking permits.

- iv. Each lessee of the building shall submit to the management a fully completed application form prior to signing a lease, which will include but not be limited to disclosure of automobile ownership information.
 - v. Each rental lease (or subsequent condominium title) shall clearly refer to a parking license agreement. The parking license agreement shall assign one parking space per unit and shall set forth the other terms and conditions of the parking agreement. If, however, no tenant of a particular unit has an automobile, such tenant(s) may waive his or her (their) right to such assigned parking space.
 - vi. If there are additional parking spaces in the building above the number of any unleased units, the management of the building will use best efforts to encourage the leasing of those additional spaces.
 - vii. The rental lease shall include the following language unless subsequent language is mutually agreed upon by both parties:
"Apartment (Condominium) no. _____ shall be assigned parking space no. _____ in the building. This lease is subject to the terms and conditions of a parking license agreement. The parking fee per month shall be \$____. This parking fee shall not be waived unless the lessee does not have an automobile.
- b. Swimming Pool:
- i. The pool shall be open during daylight hours only (no earlier than 8:00 a.m. and no later than 9:00 p.m.), and not before Memorial Day weekend or later than September 30.
 - ii. A lifeguard shall be on duty at all times when the pool is open, and the pool shall be constructed with

a strong cover adequate to prevent pool use when it is closed.

- iii. In accordance with proposed landscape plans, extensive landscaping shall be provided to screen the ability of neighboring residents to see and hear pool activity when it is in use.
- iv. The pool shall be constructed with solid walls and heavy planting around it designed for sound attenuation in accordance with the proposed plans.
- v. Upon completion of the project, the developer shall employ an acoustical expert to determine whether the agreed upon level of sound attenuation of swimming pool noise (50 DBA measured at ground level at surrounding residences) has been achieved. If it is determined that the agreed level of sound attenuation of pool noise has not been achieved, the developer shall take reasonable appropriate steps to achieve it in conformance with the development and in consultation with the Square 1873 Committee.

c. Alley:

- i. Pursuant to the mutually-agreed provisions of D.C. Law 7-191 enacted March 16, 1989, the new alley easement crossing the project site will run north-south along the eastern boundary of the site between the existing east-west alley in the middle of the block and its opening onto Military Road as shown on the official alley closing plat (copy attached).
- ii. In accordance with proposed plans, the opening of the new alley easement onto Military Road will be constructed so as to reduce the likelihood that vehicles existing from the proposed building will enter and drive through the alley.

d. Set Backs:

- i. The north side of the east-west wing of the building shall be set back no less than 65 feet from the south curb line of Military Road as shown on plans dated September 21, 1989.
- ii. The south side of the east-west wing of the building shall be set back no less than 104 feet from the north curb line of Kanawha Street as shown on plans dated September 21, 1989.

e. Roof Step Down - The roof line of the east-west wing of the building shall be "stepped down" so that the eastern-most section of the wing shall be not more than six stories high for a distance of 41 feet, and the middle section of the wing shall be not more than nine stories high for an east-west distance of 78 feet as shown on plans dated September 21, 1989.

f. Balconies:

- i. There shall be no balconies on the north sides of the building above the second floor.
- ii. There shall be no balconies on the east sides of the building except on the southeast corner of the building closest to Kanawha Street.
- iii. All balcony "railings" shall be of solid opaque construction to a height of no less than 27 inches above the slab.

g. Vehicle Entrance - The vehicle egress and ingress to the building (for resident and visitor parking and service) shall be from Military Road.

h. Landscaping:

- i. The developer will make every effort consistent with the development to retain the large evergreen trees at the southwest corner of the site.

- ii. The landscaping shall include a substantial berm with plantings at the building vehicle entrance on Military Road to screen the view of neighborhood residents from vehicle egress and ingress, as shown in the proposed landscape plans.
- i. Garden - The garden on the south side of the building shall have no public entrance to the street. The only public entrance to the garden shall be through the building's security-controlled lobby.
- j. Garden and Building Perimeter Lighting - The lighting of the garden and building perimeter shall be adequate for security and shall be directed inward to insure that it does not directly impact on neighboring residences.
- k. 3710 Military Road and 3737 Kanawha Street Residences:
 - i. The developer shall enter into a declaration of covenants containing a restriction that maintains the single-family houses located at 3710 Military Road and 3737 Kanawha Street, both of which are now owned by Mr. Calvin Cafritz, as single-family residence zoned land for the life of the PUD.
 - ii. The declaration of covenants shall be recorded among the land records of the District of Columbia within 30 days only after and if the final decision of the Zoning Commission is granted for the approval of the PUD and only after the expiration of all appeal periods.
- l. Commercial:
 - i. The commercial space in the PUD shall be limited to no more than 9,500 square feet and its use shall be limited to (a) medical offices not involving drug or alcohol-related clinics, (b) pick up and drop-off cleaning services for building residents including a tailor, and (c) news publications sales and a small convenience store

not to exceed 500 square feet, which sells only non-perishable items and no alcoholic beverages. The hours of operation for the convenience store will be limited from 7:00 a.m. to 9:00 p.m.

- ii. All services other than the medical offices shall be accessible only from entrances inside the building, and there shall be no signage for these services which is visible from outside the building.
- iii. The size and design of all signs for the medical offices shall be controlled by the building management and there shall be no signs other than those allowed by R-5-C zoning.
- iv. All advertising with respect to the commercial space shall be visible only from inside the building.
- m. Community Room - The proposed building's community room shall be made available for use, rent free for the life of the PUD, by neighborhood residents for neighborhood meetings upon written request subject to availability. Neighborhood residents using the room agree to leave the facility in the same condition and will be responsible for any damage.
- n. Construction:
 - i. Construction noise shall not be allowed before 7:00 a.m. and after 7:00 p.m. Monday through Friday, before 9:00 a.m. and after 4:00 p.m. on Saturday, and shall be prohibited entirely on Sunday.
 - ii. Sidewalks around the perimeter of the site and the existing alley in the Square shall be kept clear and clean through the period of construction.
 - iii. In the event it is necessary to

close portions of the existing alley for more than 7 days at any time during the period of construction, the developer and his contractor will do whatever is necessary to make sure that city services (e.g. trash collection) are not interrupted. In the event that the city cannot pick up trash because the alley is closed for more than 7 days, the developer and his contractor will arrange for substitute trash collection.

- iv. The developer operating through his contractor shall encourage construction workers to use public transit by providing information on bus routes and the metro station, and use best efforts to provide off-street parking for all construction workers for the duration of the construction process. If necessary, the contractor will use best efforts to find alternative off-street parking.
- v. A vehicle wash rack shall be constructed on the site and appropriately used by construction vehicles to prevent the tracking of mud onto surrounding streets.
- vi. The developer through its general contractor, Majestic Builders Corporation, shall maintain liability insurance for all construction activities. These policies shall provide coverage of \$1 million for each occurrence and an aggregate of \$15 million. This insurance shall cover liability occurring during or as a result of construction including damage to surrounding properties, although not discovered until after the project had been completed. Additionally, each subcontractor shall be required under the terms and conditions of its contract with the general contractor to maintain separate liability insurance. The general contractor shall at all

times maintain a certificate of insurance and the name, address and telephone number of the insurance company's local agent posted in the on-site construction office.

17. The Planned Unit Development approved by the Zoning Commission shall be valid for a period of two years

from the effective date of this Order. Within such time, application must be filed for a building permit, as specified in 11 DCMR Subsection 2407.1. Construction shall start within three years of the effective date of this Order.

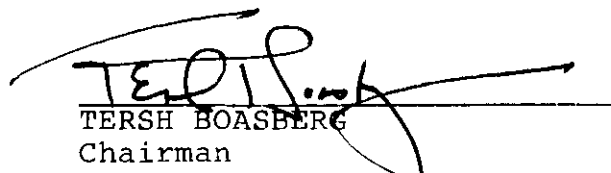
18. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.


Vote of the Zoning Commission taken at the public meeting on December 11, 1989: 3-0 (William Ensign and Maybelle Taylor Bennett to approve with conditions, Tersh Boasberg to approve by proxy, Lloyd D. Smith and John G. Parsons, not voting, not having participated in the hearing.

The guidelines, conditions and standards were approved by the Zoning Commission at its regular monthly meeting on February 12, 1990.

This order was adopted by the Zoning Commission at its regular monthly meeting on March 12, 1990 by a vote of 3-0: Maybelle Taylor Bennett, William L. Ensign, and Tersh Boasberg to approve, Lloyd D. Smith and John G. Parsons, not voting, not having participated in the care.

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on MAR 23 1990.


TERSH BOASBERG
Chairman
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat